

## REMARKS

### I. PRELIMINARY REMARKS

No claims have been amended, added or canceled. Claims 11-18, 21-30, 37-39 and 42-44 remain in the application. Claims 11-13, 18, 37 and 42-44 have been withdrawn from consideration. Reexamination and reconsideration of the application are respectfully requested.

### II. ELECTION OF SPECIES REQUIREMENT

#### A. The Requirement

Although it is not entirely clear, the Office Action appears to have required that one of the following three species be elected for prosecution on the merits:

Species I – The structure illustrated in Figure 13;

Species II – The structure illustrated in Figure 2; and

Species III – The structure illustrated in Figures 16a and 16b.

#### B. Election With Traverse

Applicant provisionally elects Species II *with traverse*. Applicant respectfully submits that claims 14-17, 21-29, 38 and 39 are directed to the elected species.

#### C. Reasons For Traversal

At the outset, applicant notes that the traversal is not based on the issues of independence or distinctness, and is not an admission that the species disclosed in the application are unpatentable over one another. Rather, the traversal is based on the myriad of procedural defects associated with the election of species requirement.

First and foremost, the Office Action indicated that the **same catheter-based probe** is three different species. More specifically, Figure 1 is an illustration of a catheter 10 with a catheter body 12. The catheter body 12 may be pulled into a loop 62 that defines an apex 76. Figures 2, 13, 16a and 16b are merely different illustrations of the catheter-based probe illustrated in Figure 1. To that end, and as noted for example in the "Brief Description of the Drawings" portion of the application:

Figure 2 is an enlarged view of the distal portion **of the probe illustrated in Figure 1.**

\* \* \*

Figure 13 is a partial section view of the hinge region **of the probe illustrated in Figure 1.**

Figure 16a is a side view **showing the probe illustrated in Figure 1** positioned adjacent the pulmonary vein ostium with the expandable electrode in a collapsed state.

Figure 16b is a side view **showing the probe illustrated in Figure 1** positioned adjacent the pulmonary vein ostium with the expandable electrode in an expanded state.

[Page 5, line 21 to Page 6, line 21.] The Office Action failed to provide any support for the novel theory that the same probe can simultaneously be three different species of a probe. Thus, the Office Action failed to properly identify more than one species from which applicant was to elect. [See MPEP § 809.02(a).]

The Office Action also failed to provide the reasons why the inventions are independent or distinct, as required by MPEP § 808.

The Office Action further failed to provide the reasons for insisting upon restriction, such as separate classification, separate status in the art, or different field of search, as required by MPEP § 808.02.

#### **D. Request For Response to Traversal**

Should the Election of Species requirement be maintained, applicant hereby requests that the next Office Action respond to each of the reasons for traversal presented above in order to clarify the issues to be addressed in applicant's petition to the Technology Center Director.

### III. CLOSING REMARKS

Early and favorable consideration of the elected invention are respectfully requested. Allowance of the claims at an early date is courteously solicited. If for any reason the Examiner finds the application other than in condition for allowance, the Examiner is respectfully requested to call Applicants' undersigned representative at (310) 563-1458 to discuss the steps necessary for placing the application in condition for allowance.

The Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayment to Deposit Account No. 50-0638. Should such fees be associated with an extension of time, applicant respectfully requests that this paper be considered a petition therefor.

Respectfully submitted,

7/11/2006  
Date

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